In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:	)	
	)	Chapter 7 Case
HARRY EDWARD MATTIVE	)	
	)	Number 93-41908
Debtor	)	

MEMORANDUM AND ORDER
ON MOTION TO APPROVE COMPROMISE

This matter comes before the Court on the Trustee's Motion to Approve Compromise. For the reasons that follow, the Motion will be granted.

FINDINGS OF FACT

Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on November 1, 1993, and Wiley A. Wasden, III, was thereafter appointed Chapter 7 Trustee in Debtor's case. Prior to filing his Chapter 7 petition, Debtor's home was damaged by a fire that occurred on January 23, 1993. At the time of the fire, Debtor's home was insured for loss due to fire under a policy of insurance issued by Allstate Insurance Company ("Allstate"). Allstate subsequently refused, however, to pay Debtor's claim for fire damage to his home and its contents.

On May 17, 1994, the Trustee moved the Court to permit him to employ Christopher L. Rouse as special counsel for the Trustee in order to prosecute a lawsuit against Allstate to enforce the terms of Debtor's policy. The Trustee's Motion was granted by Order entered June 20, 1994.

After discovery and a number of pre-trial motions, special counsel for the Trustee and counsel for Allstate entered into settlement negotiations on the eve of trial before the Honorable B. Avant Edenfield in the United States District Court for the Southern District of Georgia. As a result of those negotiations, Allstate offered to pay $30,795.96 on the claim for damage to Debtor's house and $20,000.00 for damage to and destruction of certain of Debtor's personalty.

In support of his Motion, Trustee asserts that the figure of $30,795.96 represents 100% of the estimate of the costs to repair Debtor's house. Moreover, the Trustee asserts that there is a *bona fide* dispute as to the validity of Debtor's claim for losses caused by the fire, as well as the replacement value of Debtor's damage and destroyed personal property. The dispute over the validity of Debtor's claim arises because, according to the Trustee, Allstate contends that Debtor played some role in causing the fire. As for the dispute over the replacement value of the personal property, Trustee points out that Debtor filed a previous Chapter 13 bankruptcy on February 11, 1992, and the value that he placed upon his personal property in his schedules is substantially less than the settlement amount of $20,000.00. Trustee therefore believes the proposed settlement to be in the best interests

of the estate. The Trustee further seeks permission to release Allstate from any further responsibility under the insurance policy and to allow the rights of all parties with ownership claims to these sums to attach to the proceeds received by the Trustee.

The Debtor and Rousseau Mortgage Corporation filed objections to Trustee's Motion. Debtor objects to the portion of the settlement proposing to pay $20,000.00 for his personalty. He contends that this amount would not adequately compensate him for the loss of his personalty and does not include compensation for his loss of use of his home or for reimbursement of his rental expenses. Rousseau Mortgage Corporation, on the other hand, objects to the portion of the compromise proposing to pay $30,795.96 for damage to the house itself. Rousseau holds a first-priority security deed against the real estate, and it contends that, after legal fees and Trustee's fees are deducted, the proposed settlement will not yield sufficient funds to repair the property. Accordingly, both Debtor and Rousseau request that this Court deny approval of the Trustee's proposed compromise.

CONCLUSIONS OF LAW

The task of a bankruptcy court when faced with a motion to compromise, and objections thereto, is to determine whether the proposed settlement is in the best interest of the bankruptcy estate. Nellis v. Shugrue, 165 B.R. 115, 121 (S.D.N.Y. 1994); In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); In re Energy Coop, Inc., 886 F.2d 921, 927 (7th Cir. 1989). A court is not required to "decide the

numerous questions of law and fact raised by [objecting parties] but rather must canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." Nellis v. Shugrue, 165 B.R. at 121 (*citing* In re W.T.Grant Co., 699 F.2d 599, 608 (2nd Cir. 1983), *cert. denied,* 464 U.S. 822, 104 S.Ct. 89, 78 L.Ed. 2d 97 (1983)). *See also* Newman v. Stein, 464 F.2d 689, 693 (2nd Cir. 1972), *cert. denied sub. nom.,* Benson v. Newman, 409 U.S. 1039, 93 S.Ct. 521, 34 L.Ed.2d 488 (1972). A Bankruptcy Court should, however, make an independent determination when considering a settlement, and although the Court may consider the opinions of the trustee or debtor and their counsel that a settlement is fair and equitable, the judge cannot "accept the trustee's word that the settlement is reasonable nor may the judge merely rubberstamp a trustee's proposal." Nellis v. Shugrue, 165 B.R. at 122 (*citing* In re Ionosphere Clubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd* 17 F.3d 60 (2nd Cir. 1994)). *See also* In re Energy Coop, Inc., 886 F.2d at 924.

In sum, the bankruptcy judge is ultimately responsible for an unbiased and informed assessment of a settlement's terms, *see* Plummer v. Chemical Bank, 668 F.2d 654, 659 (2nd Cir. 1982), but should not conduct a "mini-trial" on the merits of the underlying litigation. *See* Nellis v. Shugrue, 165 B.R. at 122; *See also* In re Blair, 538 F.2d 849, 951 (9th Cir. 1976). As the Supreme Court has noted:

> There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts

> necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all of the factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

Protective Comm. for Indp. Stockholders of TNT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424, 88 S.Ct. 1157, 1163-64, 20 L.Ed.2d 1 (1968). In making such an assessment, courts have set forth a number of factors to consider, including: (1) the probability of success in the litigation; (2) the difficulties associated with collection; (3) the complexity of the litigation and the attendant expense, inconvenience and delay; and (4) the paramount interest of the creditors. *See* In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2nd Cir. 1992) cert. dismissed, ____ U.S. ___, 113 S.Ct. 1070, 122 L.Ed.2d 497 (1993); Nellis v. Shugrue, 165 B.R. at 122; In re Ionosphere Clubs, Inc., 156 B.R. 414, 428 (S.D.N.Y. 1993). Other, related factors have also been suggested: (1) the balance between the likelihood of success compared to the present and future benefits offered by the settlement; (2) the prospect of complex and protracted litigation if settlement is not approved; (3) proportion of the class members who do not object or who affirmatively support the proposed settlement; (4) the competency and experience of counsel who support the settlement; (5) the relative benefits to be received by individuals or groups within the class; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which settlement is the product of arms length bargaining. Nellis v. Shugrue, 165 B.R. at 122; In re Frost Brothers, 1992 W.L. 373488, slip op. at 4, No. 91 CIV. 5244

(S.D.N.Y. December 2, 1992).

After considering all of these factors, the Court is satisfied that Trustee's proposed compromise falls well within the "lowest point in the range of reasonableness." The Trustee demonstrated that the "lowest point" could be zero, given the defense of arson that Allstate asserted. Moreover, this Court has examined the schedules that Debtor filed in his previous Chapter 13 case, and they indicate a value for Debtor's household personalty of only $2,100.00.[1] In view of the fact that Debtor signed these schedules under oath less than a year before the fire occurred, it is clear to this Court why the Trustee believes that he would have great difficulty proving a higher value at trial. Because these schedules call into question Debtor's assertion that he lost more than $20,000.00 in personalty as a result of the fire, they arm Allstate with a powerful impeachment tool on the issue of Debtor's alleged participation in the fire. I therefore conclude that, if the settlement is not approved and if the case is tried on the merits, there is a significant possibility that the Trustee will recover nothing for creditors and incur significant administrative expenses at the same time. Because neither of the objecting parties has demonstrated that the Trustee's proposed settlement falls below the "lowest point in the range of reasonableness," his Motion will be granted.

[1] Debtor's Schedule "B - Personal Property", lists assets totalling $11,050.00. This figure includes, $100.00 in a checking account, $1,850.00 in miscellaneous household goods, $100.00 in miscellaneous clothing, $75.00 in jewelry, $75.00 in firearms and an pick-up truck valued at $8,850.00. Thus, the Court arrives at the figure of $2,100.00 as the value of Debtor's household personalty by subtracting $100.00 in the checking account and the $8,850.00 truck; neither of these items would be subject to damage by fire.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Trustee's Motion to Approve Compromise is hereby granted.

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Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of April, 1995.